

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF ALABAMA**

In re

Case No. 99-5555-DHW  
Chapter 13

BERTHA HAYES,

Debtor.

BERTHA HAYES and  
CLYDE HAYES,

Plaintiffs,

v.

Adv. Proc. No. 03-3056-DHW

CITIGROUP INC., CITIFINANCIAL  
COMPANY, CITIFINANCIAL INC.,  
CITIFINANCIAL ALABAMA, INC.,  
ASSOCIATES FIRST CAPITAL  
CORPORATION, ASSOCIATES  
CORPORATION OF NORTH AMERICA,  
ASSOCIATES FINANCIAL SERVICES  
COMPANY, INC., ASSOCIATES FINANCIAL  
SERVICES COMPANY OF ALABAMA, INC.,  
CITIFINANCIAL CORPORATION, LLC,  
and MICHELLE PARTEN,

Defendants.

**MEMORANDUM OPINION**

The debtor filed a motion to remand this adversary proceeding to the Circuit Court of Lowndes County, Alabama.

The motion came on for hearing on April 15, 2003. Upon consideration of the briefs and arguments of counsel, the court concludes that the motion is due to be granted because the court lacks

subject matter jurisdiction of this adversary proceeding. The relevant facts are not in dispute.

The debtor filed a chapter 13 petition for relief on November 8, 1999. The debtor did not disclose a potential prepetition cause of action arising out of loan transactions with the defendants. The plan was confirmed on January 12, 2000.<sup>1</sup> The plan proposed 100% payment on allowed unsecured claims. The debtor completed the payments under the plan on February 4, 2003. The debtor received a discharge on March 21, 2003.

After completing the payments under the plan, the debtor filed the instant complaint in state court in February 2003 alleging state law causes of action arising from loan transactions with the defendants.<sup>2</sup> The debtor demanded a trial by jury.

The defendants removed the state court action to the bankruptcy court on March 10, 2003.

The debtor filed a motion to remand the action to the state court contending, *inter alia*, that the court lacks subject matter jurisdiction of this proceeding.

The defendants oppose the motion to remand. The defendants filed a separate action (Adv. Proc. No. 02-3069-DHW) to enjoin the debtor from prosecuting this adversary proceeding. The defendants assert that the debtor's claims are barred by various "prior adjudicatory defenses."<sup>3</sup>

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<sup>1</sup> Associates Financial Services filed a proof of claim.

<sup>2</sup> The complaint alleged the following claims: (1) fraudulent misrepresentation or omission; (2) negligent hiring, training and supervision; (3) wanton hiring, training and supervision; (4) unconscionability; and (5) unjust enrichment.

<sup>3</sup> The defenses include res judicata, judicial estoppel, equitable estoppel, waiver, and the effect of 11 U.S.C. § 1327(a). All of the defenses arise out of the debtor's failure

The debtor contends that the court lacks jurisdiction of both the removed civil action and the independent action. The court agrees.

The bankruptcy court is a court of limited jurisdiction. *In re Munford*, 97 F. 3d 449, 453 (11<sup>th</sup> Cir. 1996). The court's jurisdiction is limited to "all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b).<sup>4</sup>

This section creates jurisdiction in only three categories of proceedings: those which (1) arise under title 11; (2) arise in a case under title 11; or (3) are related to a case under title 11. The bankruptcy court's jurisdiction is "derivative of and dependent upon these three bases." *Johnson, Blakely, Pope, Boker, Ruppel & Burns, P.A. v. Alvarez (In re Alvarez)*, 224 F. 3d 1273, 1280 (11<sup>th</sup> Cir. 2000).

"Arising under' proceedings are matters invoking a substantive right created by the Bankruptcy Code," *Carter v. Rodgers*, 220 F. 3d 1249, 1253 (11<sup>th</sup> Cir. 2000), matters involving a "cause of action created or determined by a statutory provision of title 11." *Maitland v. Mitchell (In re Harris Pine Mills)*, 44 F.3d 1431, 1435 (9<sup>th</sup> Cir. 1995).

"Arising in" proceedings are "generally thought to involve 'administrative-type matters . . . that could arise only in bankruptcy.'" *Carter*, 220 F.3d at 1253; *Maitland*, 44 F.3d at 1435. "In other words, 'arising in' proceedings are those that are not based on any right expressly created by title 11, but nevertheless, would have no existence outside of the bankruptcy." *Maitland*, 44 F.3d at 1435.

The Eleventh Circuit has used the following test for determining whether a proceeding is "related to" a case under title 11:

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to disclose her cause of action in the chapter 13 case.

<sup>4</sup> The jurisdiction is original but not exclusive. *Id.*

"[T]he test for determining whether a civil proceeding is related to bankruptcy is whether the outcome of the proceeding could conceivably have an effect on the estate being administered in bankruptcy.' " *Lemco Gypsum, Inc.*, 910 F.2d at 788 (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir.1984)). In other words, " '[a]n action is [sufficiently] related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.' " *Lemco Gypsum, Inc.*, 910 F.2d at 788 (quoting *Pacor, Inc.*, 743 F.2d at 994).

*Munford*, 97 F.3d at 453 (11<sup>th</sup> Cir. 1996). "The 'related to' connection has been described as 'the minimum for bankruptcy jurisdiction.'" *Continental Nat'l Bank of Miami v. Sanchez (In re Toledo)*, 170 F. 3d 1340, 1345 (11<sup>th</sup> Cir. 1999). "In order for the bankruptcy court to exercise subject matter jurisdiction over a dispute . . . some nexus between the civil proceeding and the title 11 case must exist." *Munford*, 97 F.3d at 453 (11<sup>th</sup> Cir. 1996) (citing *In re Lemco Gypsum, Inc.*, 910 F.2d 784, 787 (11<sup>th</sup> Cir.1990)).

The issue is whether the removed civil action and the independent action arise under title 11, arise in a case under title 11, or are at least related to the debtor's chapter 13 bankruptcy case.<sup>5</sup> Because the

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<sup>5</sup> The Sixth Circuit has expressed the minimum nexus concept as follows:

For the purpose of determining whether a particular matter falls within bankruptcy jurisdiction, it is not necessary to distinguish between the second, third, and fourth categories (proceedings "arising under," "arising in," and "related to" a case under title 11). These references operate conjunctively to define the scope of jurisdiction. See *In re Wood*, 825 F.2d at 93. Therefore, for purposes of determining section 1334(b) jurisdiction, it is necessary only to determine whether a matter is at least "related to" the bankruptcy. *Id.*

independent action merely asserts defenses to the removed civil action, the jurisdictional analysis for both actions is the same.

In the removed civil action, the debtor asserts claims arising from loan transactions with the defendants. The claims arise under state law and do not invoke a “substantive right” or “cause of action” created by the Bankruptcy Code. Therefore, the action does not “arise under” title 11.

Neither does the action “arise in” a case under title 11 because the action could (and did) exist outside of the bankruptcy. In fact, the claims in the removed action arose before the bankruptcy case was even filed.

The sole remaining basis for jurisdiction is “related to.” The action is related to the chapter 13 bankruptcy case if “the outcome of the proceeding could conceivably have an effect on the estate being administered in bankruptcy.” *Lemco Gypsum*, 910 F.2d at 788.

However, the estate has been fully administered. The debtor completed payments under the plan on February 4, 2003. The plan provided for 100% payment on all allowed unsecured claims. Upon completion of the payments the debtor became entitled to a discharge. 11 U.S.C. § 1328(a). The discharge entered March 21, 2003. There is no further relief to accord to the debtor or creditors in this case.<sup>6</sup> The case is in closing posture. The removed civil action could have no conceivable effect on a fully administered estate.

For the same reason, neither could the outcome “alter the debtor's

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*Michigan Employment Security Commission v. Wolverine Radio Co., (In re Wolverine Radio Company)*, 930 F.2d 1132, 1141 (6<sup>th</sup> Cir. 1991).

<sup>6</sup> The court notes that relief under chapter 13 is generally voluntary. An involuntary case can not be commenced under chapter 13. 11 U.S.C. § 303. Moreover, a debtor has an absolute right to voluntarily dismiss a chapter 13 case at any time as long as the case had not previously converted from chapter 7, 11, or 12. 11 U.S.C. § 1307(b).

rights, liabilities, options, or freedom of action (either positively or negatively)” or in any way impact “upon the handling and administration of the bankrupt estate.” *Lemco Gypsum*, 910 F.2d at 788.

The court therefore concludes that it lacks subject matter jurisdiction of the removed civil action and the independent action because the actions neither arise under title 11 nor arise in or are related to a case under title 11.

The defendants argue, however, that this court has “inherent” jurisdiction to enforce its own orders. The defendants assert that the confirmation order in the chapter 13 bankruptcy case constituted an adjudication of the nonexistence of the debtor’s claims against the defendants. The defendants contend that dismissal of the bankruptcy case does not eliminate the “prior adjudicatory” effect of the order.

First, however, the court has no subject matter jurisdiction outside of the three bases prescribed in 11 U.S.C. § 1334. As stated above, the court's jurisdiction is “derivative of and dependent upon these three bases.” *In re Alvarez*, 224 F. 3d at 1280 (11<sup>th</sup> Cir. 2000).

Second, it appears that the defendants are not so much requesting the court to enforce the confirmation order as to determine the legal effect of the confirmation order.<sup>7</sup> The “prior adjudicatory defenses” asserted by the defendants are equally applicable in state court, and the state court is competent to determine the legal effect of the order.

A separate order will enter remanding this action to Circuit Court

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<sup>7</sup> The confirmation order provided for payments by the debtor to the trustee in the amount of \$45.00 per month for a period of 42 months or until 100% was paid on allowed unsecured claims. The order further provided for payment of the debtor’s attorney in the amount of \$500, a filing fee in the amount of \$160, and payment of a notice fee. The defendants have not asked for any of these provisions to be “enforced” nor could they be enforced in this administered chapter 13 case.

of Lowndes County, Alabama.<sup>8</sup>

Done this 21<sup>st</sup> day of April, 2003.

/s/ Dwight H. Williams, Jr.  
United States Bankruptcy Judge

c: Debtor

Rodney Newman Caffey, Attorney for Debtor

Derek F. Meek, Attorney for Citigroup

Michael L. Hall, Attorney for Citigroup

C. Lance Gould, Attorney for Hayes

Curtis C. Reding, Trustee

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<sup>8</sup> However, the court notes that the debtor filed a chapter 7 bankruptcy case (Case No. 03-30313-WRS) on February 3, 2003. The cause of action asserted in this adversary proceeding may belong solely to Tom McGregor, the chapter 7 trustee. Following remand, the trustee may move to intervene to be substituted as the plaintiff and real party in interest.